SUPREME COURT, U. S.

JUL 12 1973

MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-103

DOLORES IANNELLI, *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit, entered in the above-entitled case on June 12, 1973.

CITATIONS TO OPINIONS BELOW

The district court's opinion denying motions to suppress evidence and to dismiss the indictment is reported at 339 F. Supp. 171 and is reprinted in Appendix A, in the petition filed at No. 73-64. The opinion of the Court of Appeals is not yet reported and is reprinted in Appendix A hereto, *infra*.

JURISDICTION

The judgment of the Court of Appeals was entered June 12, 1973. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTION PRESENTED

1. Whether the authorization and identification procedures followed by the Department of Justice in this case were sufficient to comply with Title III of the Omnibus Crime Control Act and Safe Streets Act of 1968 and whether the evidence obtained by wiretap should have been suppressed.

STATUTES INVOLVED

The statutory provisions involved are set forth in Appendix B, infra.

STATEMENT OF THE CASE

On March 25, 1971, Dolores Iannelli and a number of other persons were indicted for conspiracy and for alleged violation of 18 U.S.C. 1955. After considerable pre-trial proceedings the case came on for trial before District Judge Joseph F. Weis, Jr., on April 4, 1972. The trial consumed aproximately twenty trial days. Judgments of acquittal were granted as to four defendants and all the remaining defendants were convicted with the exception of Dolores Iannelli. The jury being unable to agree on Dolores Iannelli, a mistrial was granted as to her.

The government determined to re-try Dolores Iannelli for conspiracy and violation of 18 U.S.C. 1955 and, accordingly, additional pre-trial proceedings were held on August 2, 1972, before Judge Weis. At that pre-trial Judge Weis ruled that all of the motions

filed in the original case and the rulings made thereon would be incorporated as a part of the second case, thus obviating the necessity for refiling duplicate motions.

Dolores Iannelli was retried November 8, 1972, before a jury and Judge Weis. The conspiracy count of the indictment was dismissed on oral motion of the government. (15A) On November 10, 1972, the jury found Dolores Iannelli guilty as to Count Two of the indictment. She was immediately sentenced to six month imprisonment which was suspended and was fined five thousand dollars. (15A)

On October 19, 1970 Senior District Judge Wallace S. Gourley, sitting in Pittsburgh, Pennsylvania, upon submission of an application and affidavit to him by John M. Elias, an attorney for the Department of Justice, authorized the interception of incoming and outgoing calls at the residence of Robert and Dolores Iannelli. (52A)* The application was purported to have been authorized by Will Wilson, Assistant Attorney General for the Criminal Division of the Department of Justice and was accompanied by a letter which purported to bear his signature. (39A, 52A)

Motions to suppress were filed as well as a motion to compel admissions. (82A, 85A, 102A) In the course of the pretrial discovery and motion procedure it was disclosed that Will Wilson did not sign the letter of authorization nor did he ever review the file. (112A) Affidavits were submitted by Sol Lindenbaum and Henry Peterson which disclosed that the letter was actually signed by Henry Peterson, an assistant to

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* These references are to the Appendix in the Court of Appeals.

Mr. Wilson. (121A) The affidavit of Mr. Lindenbaum indicated that the then Attorney General, John Mitchell, had personally authorized the application. (109A) A copy of a memorandum from Mitchell to Wilson allegedly bearing Mitchell's initials was produced with Lindenbaum's affidavit. (111A) By this memorandum Mitchell designated Will Wilson to authorize the application.

Because of the paucity of facts contained in the affidavits and the failure of the Attorney General to submit an affidavit in this case, defendants requested and were granted permission to depose Mr. Lindenbaum. Mr. Lindenbaum's deposition disclosed that he had never seen the Attorney General initial the memo and that he actually did not know who placed the initials on the memo. (407A, 411A) The district court refused to suppress on the assumption that the Attorney General had personally initialed the memo. (435A) At no time up to the present has the Justice Department offered to submit an affidavit from Mr. Mitchell.

The evidence gained by the wire interceptions was utilized at the trials and tended to show that the defendants were engaged in a large scale sports betting operation

REASONS FOR GRANTING THE WRIT

1. The question presented here with respect to the authorization and identification procedures utilized by the Department of Justice is identical to that posed by *United States* v. *Chavez,* No. 72-1319, certiorari granted May 22, 1973. The question posed here is also similar to the question posed in *United States* v.

Giordano, No. 72-1057, certiorari granted March 26, 1973.

The only factual distinctions between the instant case and *United States* v. *Chavez* are that in *Chavez* there were two taps, one personally authorized by Attorney General Mitchell and the second authorized by Sol Lindenbaum, his Executive Assistant. The first tap in *Chavez* was suppressed because of misidentification and the second was suppressed because of improper authorization. In the instant case there was only one tap in which the authorizing officer was clearly misidentified. Whether the application in this case was authorized personally by the Attorney General is not known, in point of fact, the record does not disclose who authorized it. Thus the interesting question is raised as to whether mere assumptions may be substituted for proof. In this respect the present case is factually similar to the case of *Fiorella* v. *United States,* 468 F.2d 688, petition for a writ of certiorari pending, No. 72-5278.

Thus since all of the policy reasons which prompted the grant of certiorari in *Chavez,* supra, and *Giordano* supra, are applicable to this case as well, we respectfully request that certiorari be granted here, or in the alternative, that disposition of this petition be held in abeyance until *Chavez* and *Giordano* have been decided on their merits.

CONCLUSION

It is respectfully submitted that certiorari should be granted as to the first point raised in this petition because a grant in this case would result in a determination of the sufficiency of proof of proper authoriza-

tion. This important question does not arise in *Chavez* or *Giordano* and a final determination of that question is of great practical importance.

Respectfully submitted,

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